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## Advisory Opinion 12-004

This is an opinion of the Commissioner of Administration issued pursuant to Minnesota Statutes, section 13.072 (2011). It is based on the facts and information available to the Commissioner as described below.

### **Facts and Procedural History:**

On January 23, 2012, the Information Policy Analysis Division (IPAD) received a letter dated January 22, 2012, from Mary Kramer. In her letter, Ms. Kramer asked the Commissioner to issue an advisory opinion about the City of Kasson Library Board's conduct under Minnesota Statutes, Chapter 13D, the Open Meeting Law (OML).

IPAD, on behalf of the Commissioner, wrote to Lori Hopkins, Chair of the Board, in response to Ms. Kramer's request. The purposes of this letter, dated January 31, 2012, were to inform her of Ms. Kramer's request and to ask her to provide information or support for the Board's position. On February 13, 2012, IPAD received a response, dated February 10, 2012, from Joseph M. Guzinski, attorney for the Board. A summary of the facts follows.

In her opinion request, Ms. Kramer wrote:

I was terminated Friday, October 21 at 5pm during a library board special meeting which was never posted. The meeting was not scheduled and I was not informed about it until Wednesday, October 19... During the Oct. 21 meeting, I questioned whether the board was in compliance and whether the meeting was in violation of Minnesota's Open Meeting Law. The Library Chair, Lori Hopkins described the meeting as a "special meeting"... The next day... [Library Director Bonnie Adams] said the meeting did not have to be posted because it was an "emergency meeting"... I would like it clarified because the attendees still wonder whether the library was in compliance because of Ms. Hopkins' remarks.

Under the Data Practices Act, Minnesota Statutes, Chapter 13, Ms. Kramer also requested copies of the audio recordings of four closed Board meetings and was informed that the meetings had not been recorded.

**Issues:**

Based on Ms. Kramer's opinion request, the Commissioner agreed to address the following issues:

1. Did the City of Kasson Library Board comply with Minnesota Statutes, section 13D.04, regarding notice of a special meeting held Friday, October 21, 2011?
2. Did the City of Kasson Library Board comply with Minnesota Statutes, section 13D.05, regarding electronic recordings of certain closed meetings?

**Discussion:**

There is no dispute between the parties that the Board is subject to the Open Meeting law and must comply as provided in Minnesota Statutes, section 13D.01, subdivision 1(c)(3).

***Issue 1:** Did the City of Kasson Library Board comply with Minnesota Statutes, section 13D.04, regarding notice of a special meeting held Friday, October 21, 2011?*

There are three types of meetings under the Open Meeting Law: regular, special, and emergency. Public bodies are required to keep a schedule of regular meetings on file at their primary offices. Further notice is not required. (See Minnesota Statutes, section 13D.04, subdivision 1.)

For a special meeting, Minnesota Statutes, section 13D.04, subdivision 2, requires a public body to post written notice of the date, time, place and purpose of the meeting on the principal bulletin board or the door of the usual meeting room of the public body at least three days before the meeting.

Pursuant to Minnesota Statutes, section 13D.04, subdivision 3(d), an emergency meeting is defined as, "a special meeting called because of circumstances that, in the judgment of the public body, require immediate consideration by the public body." The Commissioner has previously opined that, "emergency meetings should be used rarely and for circumstances where public safety is jeopardized. Examples of emergency situations would include holding a meeting to respond to a natural disaster or to a health epidemic caused by an event such as an accident or terrorist activity." (See, Advisory Opinion 06-027.)

In her opinion request, Ms. Kramer stated that there was ongoing confusion as to whether the meeting of October 21, 2011, was held in conformity with the Open Meeting Law. Neither Ms. Kramer, nor the Board asserts that the October 21, 2011, meeting was a regular meeting. In the notice provided to Ms. Kramer on October 19, 2011, the meeting was described as, "a disciplinary hearing." Given the nature of the meeting, the Commissioner does not think that it rises to the level of an emergency meeting. Therefore, it was a special meeting and the Board

should have posted a written notice, as required by Minnesota Statutes, section 13D.04, subdivision 2(a), on or before October 18, 2011, i.e., at least three days prior to the meeting.

In his comments to the Commissioner, Mr. Guzinski wrote:

The Kasson Library Board did not provide proper notice of the special meeting of the Kasson Library Board which was held on Friday, October 21, 2011. The Library Board was under the mistaken assumption that the special meeting held on Friday, October 21, 2011, was an emergency meeting... The City Administrator and I are both satisfied that the meeting of October 21, 2011, was not, in fact, an emergency meeting. The Library Board has been informed by the Kasson City Administrator of the definition of an “emergency meeting” so that this failure of notice pursuant to Minnesota Statutes 13D.04, Subd. 2(a), will not occur again in the future.

The Commissioner is encouraged by the Board’s comments. The Board acknowledges that it did not provide adequate notice of the October 21, 2011, special meeting and has taken steps to ensure that it will not happen again.

*Issue 2: Did the City of Kasson Library Board comply with Minnesota Statutes, section 13D.05, regarding electronic recordings of certain closed meetings?*

All closed meetings, except those closed as permitted by the attorney-client privilege, must be recorded at the expense of the public body, per Minnesota Statutes, section 13D.05, subdivision 1(d). Public bodies may close a meeting to evaluate the performance of an employee who is subject to their authority. (See Minnesota Statutes, section 13D.05, subdivision 3(a).)

Ms. Kramer submitted a data request for the recordings of four meetings closed to evaluate her job performance. In response to Ms. Kramer’s data request, the Kasson City Administrator, Randy Lenth, replied that the meetings had not been taped. If the Board had taped the meetings, Ms. Kramer would have been entitled to get access to the recordings that contained data about her under Minnesota Statutes, section 13.43, subdivisions 2 and 4.

Mr. Guzinski wrote to the Commissioner:

Unfortunately, the Kasson Library Board failed to electronically record the four closed meetings mentioned above. The Kasson City Administrator has informed the Kasson Library Board of the requirements of Minn. Stat. 13D.05, Subd. 1(d).

Again, the Board has acknowledged that it was not in compliance with the Open Meeting Law when it failed to record the four closed meetings on July 14, 2011, August 31, 2010, May 12, 2009, and December 8, 2009. Having now been informed of the recording requirements by the City Administrator, the Board can avoid similar situations in the future.

**Opinion:**

Based on the facts and information provided, the Commissioner's opinion on the issues Ms. Kramer raised is as follows:

1. The City of Kasson Library Board did not comply with Minnesota Statutes, section 13D.04, regarding notice of a special meeting held Friday, October 21, 2011.
2. The City of Kasson Library Board did not comply with Minnesota Statutes, section 13D.05, regarding electronic recordings of certain closed meetings.

Signed:   
Spencer Cronk  
Commissioner

Dated: 3/8/2012